

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT COURT OF APPEALS
AT NEW YORK, NEW YORK, CITY FOLEY SQUARE

76-2156

JAN 7 1977

CIVIL ACTION NO. N 76-353

Brief And Appendix

BRIEF IN SUPPORT OF CAUSE FOR A THREE
JUDGE CONSTITUTIONAL COURT TO CONVENE

RICHARD A. JENKINS

PLAINTIFF, PETITIONER PRO: SE:

___ V.

THE UNITED STATES OF AMERICA:

RESPONDANT, DEFENDANT:

COMES NOW ONE RICHARD A. JENKINS, HEREINAFTER KNOWN AS YOUR PETITIONER, AND
THE SAME WILL STATE HIS CAUSE OF ACTION:

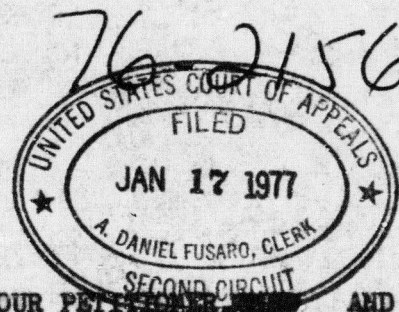
"BRIEF HISTORY OF THE CASE"

THE PETITIONER WAS TRIED AND CONVICTED OF THE ALLEGED CRIME OF BANK ROBBERY,
IN SEPT. 1973, AND WAS SUBSEQUENTLY REMANDED TO THE CUSTODY OF THE UNITED STATES
ATTORNEY GENERAL FOR A PERIOD NOT TO EXCEED 18) YEARS.

IN SEPT..1976, THE PETITIONER FILED THE FOLLOWING "MOTIONS INTO THE U.S. DISTRICT
COURT, FOR THE DISTRICT OF CONNECTICUT, NEW HAVEN, CONNECTICUT, ENTITLED "APPLICATION
AND/ OR "MOTION" FOR A THREE JUDGE CONSTITUTIONAL COURT TO CONVENE, AND "MOTION"
FOR ~~INTERLOCTORY~~ INTERLOCTORY INJUNCTION AND "MOTION" FOR A TEMPORARY
RESTRAINING ORDER: UNDER THE COLORS OF 28 U.S.C.A. 2282 AND 28 U.S.C.A. 2284, 2284
(3) AND UNDER RULE 65 (E). SUBMITTED IN GOOD FAITH IN FORMA PAUPERIS.

THE HONORABLE JUDGE JON NEWMAN, ON OCT. 21, 1976, DISMISSED THE APPLICATION, TREATING
THE SAME AS A "MOTION" PURSUANT TO 28 U.S.C.A. # 2255 "MOTION" WHICH WAS NOT
IN GOOD FAITH.

"STATEMENT OF THE FACTS"



B
P/S

THE HONORABLE JUDGE JON NEWMAN, ON OCT. 21, 1976, DISMISSED THE APPLICATION, TREATING THE SAME AS A "MOTION" PURSUANT TO 28 U.S.C.A. # 2255 "MOTION" WHICH WAS NOT IN GOOD FAITH.

"STATEMENT OF THE FACTS"

THE HONORABLE JUDGE CONTENDS THAT THE PETITIONER FILED A "MOTION" PURSUANT TO # 2255, WHICH IS NOT TRUE, BUT THE PETITIONER WILL SUBMIT THAT THE CONTENTIONS ARE CORRECT WHEN THE HONORABLE JUDGE STATES THAT THE BILL WAS PASSED TO PROTECT AND STABILIZE THE FEDERAL RESERVE SYSTEM AND ITS MEMBERS, AND CITES "WAY V. UNITED STATES, 268 F.2d 785 (10TH CIR. 1959)". FURTHER, CORRECT IN CITING "THE TERM" "INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION" IN 2113(F) IS USED TO IDENTIFY WHICH BANKS ARE COVERED BY THE SECTION. "PIGFORD V. U.S., 518 F.2d. 831 4th CIR. (1975)".

THE PETITIONER WILL CONTEND THAT THE HONORABLE JUDGE DID NOT DEAL WITH THE FACTS AS PRESENTED BY THE PETITIONER, AND DISMISSED THE APPLICATION IN AN ARBITRARY CAPRICIOUS MANNER, AND TENDED TO ABUSE THE POWER INVESTED IN HIM, BECAUSE THE CONTENTS OF THE APPLICATION SPEAKS FOR THEMSELVES.

10-8120

(2)

THE PETITIONER FURTHER CONTENDS THAT THE TREATING OF THE APPLICATION WAS IN DIRECT VIOLATION OF 18 U.S.C. (1001,)THE GOVERNMENT IS COMMITTING FRAUD THROUGH THE CONTENTION OF THE HONORABLE JUDGE.(SEE(GERTSLER V. GAMBLE SECURITIES,INC.,

298 F.SUPP.66 D.C.N.Y.(1969):A HALF TRUTH IS MORE MISLEADING THAN A STATEMENT THAT IS WHOLLY FALSE,(SEE)ALSO,GOOLF RANCH RESORT MOTEL INC. V.TAR HEEL MORTGAGE COMPANY,341 F.SUPP.846:MISREPRESENTATIONS MADE WITHOUT SPECIFIC FRAUDULENT INTENT,BUT MADE WITH RECKLESS ABANDON AND DIS REGARD FOR TRUTH,CONSTITUTES FRAUD.

THE "APPLICATION" FILED BY THE PETITIONER ESSENTIALLY DEALS WITH THE "ARBITRARINESS" THE CAPRICIOUSNESS,AND OVERBROADNESS",AND UNCONSTITUTIONALITY" OF THE PRESENT DAY BANK ROBBERY STATUTE,AND THE INVALIDNESS OF THE BILLS OF "INDICTMENTS" AS APPLIED IN THE PETITIONER'S CASE AND ALL OTHERS WHERE THE FEDERAL DEPOSIT INSURANCE CORPORATION IS INVOLVED.

THE FEDERAL DEPOSIT INSURANCE CORPORATION WAS CREATED BY CONGRESSIONAL "ACT" OF JUNE 16,1933(CH.89 SEC.8,48 STAT. 168.)

THE REASON FOR THE ACT WAS DUE TO THE FACT THAT LATE IN 1929,THE ECONOMIC STRUCTURE OF THE NATION COLLAPSED AND THE GREAT DEPRESSION WAS THE RESULT.

BY 1932 FIVE THOUSAND (5000) BANKS HAD SHUT THEIR DOORS ON THE DEPOSITORS,AND THE BANKS REFUSED TO GIVE THE DEPOSITORS THEIR MONEY BELONGING TO THEM.

LIKEWISE,THE CITIZENS OF THE UNITED STATES REFUSED TO PUT THEIR SAVINGS INTO THE THOUSANDS OF DISHONEST AND FRAUDULENT BANKS.

DURING THE TERM OF THE 21st PRESIDENT OF THE UNITED STATES,(1929,1933),PRESIDENT HERBERT HOOVER MADE THE STATEMENT THAT ALL THE BANKS WERE SOUND,KNOWING THE BANKS TO BE UNSAFE,AND THE CITIZENS WOULD NOT PUT THEIR MONIES INTO THEM UNTIL AFTER THE CREATION OF THE FDIC WHICH INSURED EACH DEPOSITOR IN THE EVENT THAT THE BANK WERE TO CLOSE THEIR DOORS AGAIN THEY WOULD RECIEVE THE MONIES THEY HAD ON DEPOSIT. THE FDIC WAS CREATED ~~WHICH~~ ~~WHICH~~ SOLELY FOR THE PURPOSE OF

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TITLE 1 FEDERAL DEPOSIT INSURANCE,16(D) IN PART:" RECIEPTS FOR PAYMENTS BY THE UNITED STATES FOR OR ON ACCOUNT OF SUCH STOCK SHALL BE ISSUED BY THE CORPORATION TO THE SECRETARY OF THE TREASURY AND SHALL BE EVIDENCE OF THE STOCK OWNERSHIP OF THE UNITED STATES."

THE PETITIONER CONTENDS THAT IF OWNERSHIP IS NECESSARY FOR A CIVIL ACTION,SUCH MUST ALSO REMAIN TRUE FOR A CRIMINAL ACTION,FOR THE CONSTITUTION CONTROLS ALL LAWS

(3)*****

CIVIL OR CRIMINAL.

IT IS NOT THE NATURE OF THE AUTHORITY IN QUESTION(CIVIL-CRIMINAL)
BUT THAT THEY MUST CONFORM AND BE EQUAL IN POWER AND SCOPE.

"ARGUMENT"

THE PETITIONER SUBMIT TO THIS HONORABLE COURT,THAT THE CONTENTIONS OF THE
HONORABLE JUDGE NEWMAN,IS WHOLLY WITHOUT SUBSTANCE AND DOES NOT DEAL WITH THE
QUESTIONS AND ISSUES AT BAR,BECAUSE THIS COURT CANNOT SEE ANY MERITS TO THOSE
CONTENTIONS,FOR IN HODGSON V.BOWER BANK,5 GRANCH 303 1 L.ED.103(1802),FEDERAL
PROCEDURE 3. IN RE-BARRY,NOTE (1890) 136 U.S. 609 10 S.CT 850,L.ED 509; POOLEY V.
LUCE,(1896) 0.C.CAL.72 F.561; ROSCO V.GAGLIARDO,(1863)2.2.CAL.85.

SETS THE ULTIMA OR UTMOST ISLE,BEYOND WHICH THE MOST ADVENTUROUS VOYAGER IN WHICH
THE FEDERAL JUDICIAL SYSTEM CANNOT HOPE TO TRAVEL.UNLESS A CASE FALLS WITHIN THE
NINE (9) ENUMERATIONS OF THE DEATHLESS PARAGRAPH,ANY FEDERAL COURT IS WITHOUT
JURISDICTION. THEREFORE,IN LIGHT OF THESE FACTS,AND IN VIEW OF THE FACTS
PRESENTED IN THE "APPLICATION",THIS COURT WILL READILY SEE THAT THE JUDGE
ERRED IN DISMISSING THE SAME,AND THE RELIEF SOUGHT SHOULD HAVE BEEN GRANTED IN
FULL,AS THE BILLS OF INDICTMENTS ARE VOID AND INVALID,AND THIS COURT SHOULD RULE.
ALSO,THE JUDGE ERRED IN TREATING THE "APPLICATION" AND/ OR " MOTION" FOR A THREE
JUDGE CONSTITUTIONAL COURT TO CONVENE,AND "MOTION" FOR AN INTERLOCUTORY INJUNCTION,
AND "MOTION" FOR A TEMPORARY RESTRAINING ORDER,UNDER COLORS OF 28 U.S.C. 2282,AND
28 U.S.C. 2284,2284(3) AND UNDER RULE 65 (E). SUBMITTED IN GOOD FAITH IN FORMA
PALPERIS.

AS AN APPLICATION" PURSUANT TO 28,U.S.C
42255,FOR THE MAGNITUDE OF SUCH MOTION CANNOT BE TREATED IN SUCH MANNER.

(SEE) GARRAS V.MONAGHAM,D.C.PA.(1946)65 F.SUPP.658. MORGAN V.U.S.(1952)107 F.SUPP.
501.

"PRAYERS"

THE PETITIONER WILL SUBMIT THAT THIS HONORABLE COURT SHOULD GRANT THE RELIEF
SOUGHT IN HIS "APPLICATION" AS HE IS ILLEGALLY DETAINED AND RESTRAINED OF HIS
LIBERTY BY THE ARBITRARY CAPRICIOUS AND OVERBROAD ACT OF BEING PROSECUTED AND
CONVICTED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT,
NEW HAVEN,CONNECTICUT,IN THE "CASE OF RICHARD A.JENKINS V. THE UNITED STATES OF
AMERICA,DOCKET NO. 76-353 N. IN THE YEAR OF 1973.

"PRAYERS"

THE PETITIONER WILL SUBMIT THAT THIS HONORABLE COURT SHOULD GRANT THE RELIEF SOUGHT IN HIS "APPLICATION" AS HE IS ILLEGALLY DETAINED AND RESTRAINED OF HIS LIBERTY BY THE ARBITRARY CAPRICIOUS AND OVERBROAD ACT OF BEING PROSECUTED AND CONVICTED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, NEW HAVEN, CONNECTICUT, IN THE "CASE OF RICHARD A. JENKINS V. THE UNITED STATES OF AMERICA, DOCKET NO. 76-353 N. IN THE YEAR OF 1973.

FURTHER, PRAYS THAT THIS COURT WILL ORDER HIS RELEASE FORTHWITH, AND RESTRAIN THIS DISTRICT COURT FROM ANY FURTHER DELAY IN HIS RELEASE, AS THE SAME HAS VIOLATED HIS CONSTITUTIONAL RIGHTS AND CIVIL RIGHTS, ALL IN VIOLATION OF THE DUE PROCESS CLAUSE, FROM 6th AMENDMENT RIGHTS THROUGH 14th AMENDMENT RIGHTS, WHICH IS A FARCE AND A ~~MOCKERY~~ MOCKERY OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

AND NOW THIS ACTION IS SUBMITTED IN GOOD FAITH, IN FORMA PAUPERIS.
BY RICHARD A. JENKINS

"VERIFICATION"

I, RICHARD A. JENKINS, DO HEREBIN HEREBY CERTIFY THAT HE HAS CAUSE TO PLACE INTO THE U.S. MAIL TRUE COPIES OF THIS LEGAL ACTION, AND SERVE THE SAME UPON THE FOLLOWING PERSONS: THE HONORABLE CLERK OF COURTS FOR THE

UNITED STATES SECOND CIRCUIT COURT OF APPEALS, AT NEW YORK CITY NEW YORK.

TO THE CLERK OF COURT FOR THE DISTRICT COURT OF CONNECTICUT, NEW HAVEN

CONNECTICUT, AND THE UNITED STATES ATTORNEY AT THE SAME ADDRESS:

DONE THIS DAY OF JAN. 1977.

"CERTIFICATE OF SERVICE"

I, RICHARD A. JENKINS, DO HEREBIN HEREBY DEPOSES AND SAYS THAT THE ALLEGATIONS HEREIN ARE TRUE AND CORRECT TO THE BEST OF HIS ABILITY, EXCEPT THINGS THAT HE WAS TOLD, AND THE SAME HE BELIEVES TO BE TRUE.

SWORN TO AND SUBSCRIBED BEFORE ME THIS DAY OF JAN. 1977.

NOTARY PUBLIC

MY COMMISSION EXPIRES

JAN 0 - 1976

Notary Public: authorized by the Act of
July 7, 1955 to Administer Oaths (18 U.S.C.
4004).

RESPECTFULLY SUBMITTED BY RICHARD A. JENKINS

Richard A. Jenkins

RICHARD A. JENKINS

NO. 96589

BOX PMB

ATLANTA, GEORGIA 30315

DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	\$	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
205-3	N76- 353	10 21 76	2	510	1					0508 JON		N76 353

PLAINTIFFS

RICHARD A. JENKINS

DEFENDANTS

UNITED STATES OF AMERICA

CAUSE Petition to vacate sentence
pursuant to §2255.

ATTORNEYS

Richard A. Jenkins
#96589
Box PMB
Atlanta, Georgia 30315

76.9

ATTORNEYS

Richard A. Jenkins
#96589
Box PMB
Atlanta, Georgia 30315

16-7181

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	DATE	RECEIPT NUMBER	C. D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	A

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Re

DATE	NR.	PROCEEDINGS
976		
10/21	1	Application and/or motion for a three-judge Constitutional Court to convene and motion for interlocutory injunction and a motion for a temporary restraining order, submitted in good faith in forma pauperis filed.
"	2	Memorandum of Decision filed: Petitioner's claim is without merit. . . . The petition is dismissed; the papers may be filed without fee. Newman, J. M-10/21/76. copies mailed.
11/22	3	Notice to file motion of an appeal filed.
1/24		Endorsement entered on Notice to file an appeal as follows: "Leave to appeal in forma pauperis Granted" Newman, J. M-11/26/76. copies mailed.
"		Notice of appeal filed by plaintiff. Copy mailed to U.S.C.A. accompanied by a copy of docket entries. Copies mailed to all parties of record.
2/6		Copy of Order received from U.S.C.A. It is Ordered that the argument of the appeal be ready to be heard during the week of April 25, 1977. Fusaro, C. M-12/6/76.

MICROFILM

OCT 21 1976

NEW HAVEN FILED

OCT 21 4 01 PM '76

UNITED STATES DISTRICT COURT

U. S. DISTRICT COURT
NEW HAVEN, CONN.

DISTRICT OF CONNECTICUT

RICHARD A. JENKINS

: N 76-353

v.

: CIVIL NO. _____

UNITED STATES OF AMERICA

:

MEMORANDUM OF DECISION

Petitioner, an inmate at the United States Penitentiary, Atlanta, Georgia, contends, in a petition filed pursuant to 28 U.S.C. § 2255, that this Court did not have subject matter jurisdiction over his case when he was tried and convicted of armed bank robbery in September, 1973. The alleged lack of jurisdiction is based on petitioner's claim that the Federal Deposit Insurance Corporation (FDIC) insures depositors against losses from bank failure, but does not insure banks against losses from armed robberies.

The claim is without merit. Congress passed 18 U.S.C. § 2113 to protect the financial stability of the Federal Reserve Bank System and its members. Way v. United States, 268 F.2d 785 (10th Cir. 1959). The term "insured by

The claim is without merit. Congress passed 18 U.S.C. § 2113 to protect the financial stability of the Federal Reserve Bank System and its members. Way v. United States, 268 F.2d 785 (10th Cir. 1959). The term "insured by the Federal Deposit Insurance Corporation" in § 2113(f) is used for the purpose of identifying which banks are covered by the section. Pigford v. United States, 518 F.2d 831 (4th Cir. 1975).

The petition is dismissed; the papers may be filed

DOCUMENT NO. 2

without fee.

Dated at New Haven, Connecticut, this 7 day of
October, 1976.

Jon O. Newman
United States District Judge